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File No. O. Motor / 452

A **BRANCH**

Subject:— Opinions under the Motor Vehicles Act, 1939

File No. O. Motor / 52

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C O N T E N T S.

Legal Department File No.O.Motor/52.

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EKN.18/6/

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Office of the R.L.A.

Sub-section (1) of section 22 of the Motor Vehicles Act, 1939, provides that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered etc. This sub-section refers to two classes of places where the vehicles may be driven, viz. public places or any other places. But it appears that in the latter class of places the vehicle must be driven for the purposes of carrying passengers or goods. The words "in any other place for the purpose of carrying passengers or goods" were added by the Select Committee with a view to bringing within the scope of section 22 vehicles used for the carriage of passengers or goods in privately owned areas. A motor vehicle which is driven in a public place must necessarily be registered. A motor vehicle which is driven in a place other than a public place must be registered only if it is driven for the purpose of carrying passengers or goods but not otherwise. That is the meaning and also the intention of section 22(1) of the Act. The view expressed by the Deputy Secretary, H.D. in his note at page 24 ante appears to be correct.

2. As regards the main question viz. whether the mobile cranes of the Bombay Port Trust are required to be registered under the Act, it may be stated that if as observed by the S.T.O. in para. 7 of his note at page 22 ante such cranes have been constructed with a view to their being put upon roads and if they are to be driven on roads they would require to be registered. The Additional Secretary's previous opinion may be deemed to have been modified to that effect.

Sd/ P.H.Lad. 22/1
Remembrancer of Legal Affairs.

U.H. to H.D.No.1001, dated the 22nd January 1952.
EKN.16/6/

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the scheme proposed by the Home Department would be legally feasible. Clause (a) of sub-section (2) of section 72 of the Act provides that no person shall drive or cause or allow to be driven in any public place any motor vehicle the laden weight of which exceeds the registered laden weight specified in the certificate of registration. Section 124 prescribes a penalty for the breach of section 72. Section 73 provides that if any person authorised in this behalf by the State Government has reason to believe that a goods vehicle is being used in contravention of section 72, he may require the driver of the vehicle to convey the vehicle to a weighing device, if any, within a distance of one mile from any point on the forward route or within a distance of five miles form the destination of the vehicle for weighment and if on such weighment the vehicle is found to contravene in any respect the provisions of section 72 regarding weight, he may direct the driver to convey the vehicle to the nearest place where facilities exist for the storage of goods and not to remove the vehicle from the place until the laden weight has been reduced so that it complies with section 72. This is the only provision in the Act for dealing with overloaded goods vehicles. It would be possible for the officer concerned to direct that the excess goods should be removed at the place where the vehicle has been conveyed. But it cannot be said that section 73 necessarily contemplates that the storage places shall be established by Government. In this connection attention is invited to section 91 occurring in the same Chapter which empowers the State Government to make rules for the purposes of that Chapter. Under clause (e) of sub-section (2) of that section rules can be made for the maintenance and management of parking places and stands and the fees which may be charged for their use.

There.....

There is no specific clause about the maintenance of storage places; and the reference to the charging of fees in clause (e) suggests that no fees can be charged except for the purposes stated in that clause i.e. parking places and stands only and the levy of a fee without a specific provision in the Act authorizing such levy would not be lawful (see Article 265 of the Constitution). Under the proposed scheme it is also contemplated that the goods lying beyond the prescribed period shall be sold by public auction and the sale proceeds credited to Government. There is no authority of law for this. In the circumstances thescheme as proposed by the Home Department does not appear to be legally feasible; and if it is intended to give effect to it it would be necessary to amend the Motor Vehicles Act, 1939.

Sd/-P.H. Lad. 1/2

Remembrancer of Legal Affairs.

U.O. to H.D.,No.1694,dated the 2nd February 1958.

EKN. 16/6/

Office of the H.L.A.

The Motor Transport Controller proposes to do away with conductors on some of the State Transport buses especially those running between two terminals. The question raised by H.D. is whether under the Motor Vehicles Act,1939, and the Bombay Motor Vehicles Rules 1940, it is necessary that every bus should have a conductor.

It is true, as stated by H.D., that there is no specific provision in the Motor Vehicles Act,1939, requiring that there should be a conductor on every stage carriage and even section 67(2) provides for making rules authorising the driver or conductor of the vehicle to exercise the powers mentioned in clauses (a) to (g) of that sub-section. But Rule 83 of the Bombay Motor Vehicles Rules provides for duties of the driver and the conductor of public service vehicle and that rule does not state that either the driver or the conductor of a public service vehicle can discharge those duties. Further, ~~Rule 83A provides that the conductor of a public service vehicle can discharge those xhx duties.~~ Further, Rule 83A provides that the conductor of a public service vehicle shall issue a ticket immediately on payment of the legal fare by the passenger. It is, therefore, apparent that to achieve them object in view rules 83 and 83A will have to be amended providing for the duties to be discharged by the drivers and conductors of public service vehicles and, in the absence of conductors, by the drivers alone.

Sd/-P.N.Lad. 8/2

Remembrancer of Legal Affairs.

U.H. to H.D.No.2104, dated the 9th February 1952.

MKM.16/8/

Office of the R.L.A.

This case was discussed with Secretary, H.D., and it was pointed out that the certificate of registration in Form G requires the details, namely, name, name of father and address of registered owner; and that similar details are required for Form E where the application is also made by the owner himself. The wording of sub-section (1) and (2) of section 24 is mandatory in that the prescribed forms are to be followed in all their details, and no power is given to vary the recitals in the prescribed forms which are part of the Act. The Motor Vehicles Act, it must be remembered, also creates offences for which a registered owner becomes liable. See Section 23(1) 23,29,30,32,33,(4),35,42, 88 etc. The usual principle of law is that in the absence of special provision to that effect, where the offender is a body corporate, the partners or the directors cannot be held liable in their individual capacity, and for that purpose it is now the drafting practice to insert a special provision in all such enactments which contemplate offences by corporate bodies holding directors responsible in certain circumstances. No such provision has been inserted in the Motor Vehicles Act- If, therefore, companies and partnerships as juridical persons are allowed to be entered as registered owners, it would be impossible to fix criminal liability for the various offences for which the owner is likely to become liable under the Act; and that will be frustrating the penal part of the Act altogether. It is, therefore, essential that some known individual on whom the criminal responsibility can be fastened must be the registered owner, andthat is perhaps the reason why forms E and G are worded in that particular manner. That does not mean, however, that a false recital is expected to be given as is suggested in the article in the 'Commerce'. It is open to the person who is shown.....

shown as registered owner to describe himself, as for example, partner, director, manager or servant of so and so so that the description will make it clear that the particular individual is not being held liable in his own individual capacity but as the director, manager, servant etc. of the corporate body. Corporate bodies can nominate individual officers for this purpose, and if there is a change, the registration certificate can also be got changed with ease. As the Act stands at present, therefore, the R.L.A. sees no reason to reconsider his opinion. If this procedure is found inconvenient or impracticable, the proper course would be to amend to Act and make therein suitable provisions for fixing liability on corporate bodies where they happen to be the owners.

Sd/ P.M. Lad.
Remembrancer of Legal Affairs. 12/2

U.O. to H.D.No.2265, dated the 12th February 1952.

EKN.46/6/

L.D.R.I.No.24519 dt^d..

Submitted with reference to the note of the H.D. at p.45 ante.

Attention may be invited to the Additional Secy's opinion No.2166 dated 11-8.1961. It is held therein that it is open to Govt. under sect.43(1) (ii) of the Motor Vehicles Act,1939 to fix different maximum or minimum fares or freights for <u>different types</u> of stage carriages or different types of public carriers. Govt. cannot discriminate in the matter of rates between one operator or another.

The question now referred to the R.L.A. is whether there is any objection to charging an additional amount outside the scope of sect. 43(1)(ii) to cover the additional services rendered to persons availing themselves of "Door to Door" delivery parcel services. The view of the Home Department is that there is no objection to the proposal of making and additional charge for the "Door to Door" delivery of parcels provided such additonal charges are shown separately from the normal freight charges on the receipts issued.

The point to be considered is whether charging of the additonal rates would amount to a breach of condition of permit under sect-59(3).

SKN.16/8/

Office of the R.L.A.

The proposal to levy additional charges would be in order provided the procedure indicated in para. 5 of the State Transport Office's endorsement is strictly followed.

Sd/- V. N. Lad.
18/3
Remembrancer of Legal Affairs.

U.O. to H.D.No.4234, dated the 19th March 1952.

EKN.16/6/

Office of the H.L.A.

Under the Motor Vehicles Act,1939, the State Government is not exempted from the provisions regarding registration of motor vehicles owned by them. (cf.H.L.A's opinion No.735, dated 24-1-45). In the absence of any special provision in the Act such as section 59 in respect of registration of vehicles belonging to the Central Government the registration of vehicles belonging to the State Government shall be governed by the same provisions as apply to vehicles belonging to other corporate bodies, and such vehicles will have to be registered in the name of particular officers. The view expressed at 'X' in the H.D.note is correct.

Sd/ , H Ld. 19/3

Remembrancer of Legal Affairs.

U.H. to L.D.,No.4324, dated the 30th March 1950.

RKR.16/6/

Office of the H.L.A.

Seen and returned.

The view expressed by the District Magistrate, Ahmedabad, is correct.

Sd/ P. M. Lad. 16/4

Remembrancer of Legal Affairs.

U.R. to H.D.No.5727, dated the 17th April 1952.

EKN.16/6/

Office of the R.L.A.

Under section 108(1) of the Motor Vehicles Act, 1939, a State Government may on the application of a co-operative society of transport vehicle owners registered under the co-operative Societies Act, 1912, or the Bombay Co-operative Societes Act, 1925, allow the society to transact the business of an insurer for the pruposes of Chapter VIII subject to the conditions specified in clauses (a) to (h). Clause (a) provides that the society shall establish and maintain a fund of not less than Rs.25,000/- for the first 50 vehicles or fractional part thereof, and pro rata for every addition vehicle in the possession of members of and insured with the society, and that the said fund shall be lodged in such custody as the State Government may prescribe. Rule 6 of the Bombay Motor Vehicles (Third Party Insurance) Rules 1946, provides that a co-operative society of public service owners allowed by the State Government under section 108(1)(a) to transact the business of an insurer shall lodge the fund in the custody of the Reserve Bank at Bombay. The definition of "Holding authority" given in rule 16 (11) of the Motor Vehicles (Third Pary Insurance) Rules is to the effect that in relation to a society the authority in whose custody the fund established under clause (a) of sub-section (1) of section 108xx of the Act is to be lodged shall be the holding authority. It is thus apparent that the fund belongs to the society; that it is to be kept in such custody as is to be prescribed; that the prescribed custody is the custody of the Reserve Bank at Bombay, and that, therefore, the bank becomes the holding authority. Under rule 18(2) of the Motor Vehicles (Third Party Insurance)Rules, securities are to duly transferred to the holding authority by the

society------

society.. The effect of these provisions, therefore, that securities which are the property of the society are to be kept in the custody of the Reserve Bank, and for that purpose are to be transferred to the Bank. The question of transferring them to the name of the State Transport Officer does not arise. The ordinary procedure regarding the custody of the securities by the Reserve Bank has no relevance, since the custody in this case is governed by statutory provisions which leave no scope for transfer of the securities to the name of the State Transport Officer.

Sd/ P. N. Lal. 17/4
Remembrancer of Legal Affairs.

U.R. to D.O.No.6016, dated the 21st April 1952.

EKN.10/6/

Office of the R.L.A.

The difficulty experienced by the S.T.O. cannot be solved, as the law stands, in the manner suggested by him. A party applying for registration and giving the necessary particulars for that purpose has a right to get the vehicle registered; and there is no provision in the Motor Vehicles Act for refusing registration on the ground that the vehicle is in fact being put to some other use. Such a provision cannot also be made; for, it will be next to impossible to adduce proof that the vehicle is not being used for a purpose other than that for which it is registered. The proper course would be to proceed against the person using the vehicle as a transport vehicle when in fact it is registered as a private vehicle, which is specifically made an offence under section 123.

Sd/ P.M. Lad. 28/4
Remembrancer of Legal Affairs.

U.R. to H.D.No.6622, dated the 29th April 1952.

EKN.16/6/

OFFICE OF THE R.L.A..

Motor Vehicles Act,1939. Sec.68(2) Change of Patners of the Firm holding permits.

There appears no specific provision either in the Motor Vehicles Act, 1939, or in the Bombay Motor Vehicles Rules, 1940 providing for the mode of granting permits in respect of vehicles owned by a Company of a firm. It is not known whether the permits are issued in the name of the Company or firm or in the name of individuals. There is no provision which makes it obligatory upon a company or a firm owning a vehicle to notify any c ange of its members or partners. Rule 96 framed under section 68(2)(t) of the Motor Vehicles Act, provides that if the holder of a permit ceases to reside or to have his place of business, as the case may be, at the address set forth in the permit, he shall within 14 days send part A of the permit to the Transport Authority by which the permit was issued intimating the new address. On receipt of such intimation the Regional Transport Authority or State Transport Authority as the case may be, after due inquiry, enter in the permit the new address. There appears no provision making it obligatory upon a company or firm holding the permit to inform the Regional Transport Authority about the change of partners, The practice followed by the Regional Transport, Authority is, therefore, not based on any provision of the Motor Vehicles Act or the Rules made thereunder. There appears, however, no objection to informing Shri Patel on the lines of the draft at page 11 ante.

Sd/ P.H. Lad. 2/5

Remembrancer of Legal Affairs.

H.R. to H.D.No.6922, dated the 22nd May 1952.

RKN.16/6/

Office of the R.L.A.

A civil suit can no doubt be filed for damage caused to Government property such as parapets, milestones, road signs etc. A suit is, however, a cumbersome process for such purpose, and would hardly be worth while unless the damage to be assessed is substantial. The most effective method will be by making legislative provision which need not be confined to the Motor Vehicles Act but may be extended to damage caused in any manner, and which should also extend to making recovery by a summary process.

Sd/ P.M. Lad. 9/5

Remembrancer of Legal Affairs.

U.R. to P.W.D.No-7826, dated the 10th May 1952.

EKN.16/6/

Office of the R.-.

Sub-section (2) of section 44 of the Motor Vehicles Act, 1939, provides inter alia that a Regional Transport Authority shall consist of such number of officials and non-officials as the State Government may think fit to appoint; but no person who has any financial interest wheth r as proprietor, employee for otherwise in any transport undertaking shall be appointed as a member of the Regional Transport Authority The Ahmedabad Municipal Corporation has established transport under taking which is controlled by the Transport Committee under section 342 of Bombay Provincial Municipal Corporations Act, 1949. A nominee of the Committee who presumably would be amember of the committee would therefore be a person having financial interest in the transport undertaking as a proprietor within the meaning of section 44(2). In this connection attention is invited to H.L.A's opinion No.12816, dated the 7th September 1950, bearing on the question whether members of the State Transport Corporation are disqualified for being members of the State Transport Authority or the Regional Transport Authority The Home Department office view is correct.

Ed/ P.M. Lad. 22/5

Remembrancer of Legal Affairs.

U.R. to H.D.No.8649, dated the 23rd May 1952.

EKN.16/6/

Legal Department

The first question raised in the letter of the General Manager, Bombay State Road Transport Corporation dated the 12th February 1952 is whether the Opinion given in R.L.A.'s No.16693 dated the 20th October 1951 can be revised, In that opinion it was stated that the Regional Transport Authority cannot hold applications for the grant of permits in abeyance to facilitate the making of an application by the State Transport Corporation. This opinion was based on earlier Opinions expressed by R.L.A. that the Corporation should not objt to the grant of stage carriage permits to private persons unless the Corporation is in a position to take over the route. It is urged that the Corporation is a local authority and whether it is in a position to take over the route or not it has a right to object to the grant of permits to other persons. This arggment has no force. The object of Chapter IVin the Motor Vehicles Act, 1939, is to control transport vehicles. The chapter is intended to provide and ensure a proper transport service to the public. The authorities empowered to act under the Chapter have, therefore, been held to be acting in a quasi-judicial manner and all the Courts have been unanimous in holding that the decisions of the said authorities cannot be arbitrary or capricious. Although the Corporation is a local authority and is entitled to appear in proceedings before such authorities, the objections to be urged by it must be proper and reasonable having regard to the object of the Chapter. A objection not based on the capacity of the applicant to rund the service properly or the capacity of the Corporation to under-take the service immediately will not be held to be valid.

2- The General Manager of the Corporation suggest that in exercise of the powers vested in Government under section 58(3) of the Motor Vehicles Act,1939,Govt.

should.....

should direct the Regional Transport Authorities to grant permits for any period between 5 years and 6 months. In the first place such a general direction will not be warranted by the provisions of section 58(3). The said sub-section empowers Government to issue a direction with respect to a particular permit or a class of permits. The words any permit or class of permits" will be construed to mean any particular permit to be designated in the order of a class of such permits. They will not be construed to mean all permits generally (See Chunilal versus King Emperor, I.L.R. (1940 Bom.587). These words will be interpreted in consonance with sub-section (1) and (2) and the other provisions of the Chapter and do not give Government absulute and unfettered discretion to give a general direction as suggested by the General Manager. Section 58(3) was inserted in the Motor Vehicles Act, 1939, by Bom. Act VII of 1947. It has been held by the R.T.A. on more than one occasion that theinsertion of the provisions by theAmending Act is entirely misconceived and does not carry out the purpose for which the Act was passed. It would not, therefore, be advisable to have recourse to section 58(3) for the purpose which the General Manager has in view.

Sd/ J.R.D. 14/6

Additional Secretary to Government,

Legal Department.

EKN.16/6/52

U. R. to Home Dept. No. 558 - Confdl., dt. 16th June 1952

Office of the H.L.A.

Motor Vehicles Act,1939 Sec.95(1)(b)

Compensation in respect of damage caused by a crowd.

The insurance against third party risk is restricted in its operation to the liability which may be incurred by the insurer in respect of death or bodily injury to any person caused by or arising out the use of the vehicle in a public place. (See Motor Vehicles Act, 1939 sub-section (1)(b) of section 95).

A third party risk insurance policy complying with the requirement of Chapter VIII of the Act would not cover a case where damage is caused to the vehicle. In law there is no obligation on the hirer of a vehicle to pay compensation in respect of damage done by others during the period of hiring and in such cases the remedy of the owner of the damaged vehicle would be to proceed against those responsible for the damage. However as the damage has been caused to the vehicle by the crowds while the arrested person was being carried by the C.I.D. officer to the Police Station, Government may consider whethr an ex-gratia payment should not be made to the owner of the vehicle.

Sd/ P. M. Lad. 19/6

Remembrancer of Legal Affairs.

U.R. to H.D.No.10282, dated the 20th June1952.

E N.16/6/

Office of the R.L.A.

The letter from the Government of India has not correctly understood the reasonings in R.L.A's opinions. No special singnificance attaches by itself to the requirement of the name of father in Forms E and G. Attention was drawn to that requirement only to show, with special reference to the legislative history by which this requirement was added, that by a "person" is intended a natural individual and not a corporation or association of persons. Reference may usefully be made to the debates on this provision which show that the amendment regarding name of father was moved on behalf of Government, that it was even then point d out that such an amendment in respect of form D which refers to a driver's license would be inept in the case of a married woman and that there may be persons who are not able to give the name of their fathers. (Vide pp.2591-92 of L.A.Debates,Vol.VI,1938). Despite these objections the amendments were pursued, and this particular requirement was put in Forms E and G. The underlying idea must, therefore, be that these forms are intended to apply only to natural individuals and not to corporations. Had the idea been to extend these Forms also to corporations, the original form which only spoke of full name and address would have been quite sufficient, and there was no necessity for an amendment. The Government of India do not seem to be aware of this legislative history. In view of this history and in view of the express provision made in the Forms, I do not think it is permissible to treat the Forms in the manner in which the Government of India suggests and to substitute herein the names of corporations is definitely varying the Form which would not be warranted by the law as it stands.

2. On the second point it is no doubt true that all the

offences.....

offences are punishable with fine; but the question of sentence in default may arise, and that will be impossible of execution against a corporation. Moreover, in the case of companies and corporations the question of fixing criminal responsibility always proves difficult; and that is why an artificial rule is introduced in most statutes making every director, manager etc. liable unless he has taken care to prevent the offence. In the absence of specific provision on these lines, it will be difficult to fix criminal liability on individuals if the vehicle is registered in the name of the company.

3. On the third point, it is trite knowledge that companies or corporations own and have their right to own motor vehicles. R.L.A's opinion does not interfere with that right, nor their capacity to get the vehicle should be registered in the name of some natural individual who may be described as a partner, director, manager or servant of the cor-poration or association. It may be pointed out that the same situation arises in respect of vehicles belonging to Government and there the English practice is quite clear that the declaration is to be made by a duly authorised officer of the Department in whose possession or use such vehicle may be. That practice has been recommended in R.L.A's opinion No.4324, dated 20.3.1958.

4. Having regard to these observations, the R.L.A. sees no reason to modify his opinion but would suggest that if Government desires that the vehicle ~~[illegible]~~ vehicle should be registered in the name of the company etc. and not in the name of an individual on their behalf as suggested in para 3 above, a suitable amendment of the Act may be made, such amendment being competent to the State Government. The amendment may be comprehensive and provide for criminal liability and other kindred topics.

Sd/ P.S.Lad. 4/7
Remembrancer of Legal Affairs.

U.R. to H.D.No.11668, dated the 15th July 1958.

Office of the H.L.A

The expectation of Rules 75 and 76 of the Bombay Motor Vehicles Rules, 1940, that the appellant should submit a memorandum setting forth concisely the grounds of objection to the order, cannot be fulfilled unless the order appealed from contains reasons; since, no grounds as such can ordinarily be urged merely against the operative part of an order. A certified copy of the order is also required apparently for the purpose of furnishing the reasons underlying the order. In view of the intention of the Rule and having regard to the gen ral expectation that administrative Tribunals of this kind should as far as possible give reasoned grounds for their conclusions (Justice and Administrative law, Robson, 2nd Edition p.503), it would be necessary for the appellate authority to record reasons for its decision.

Sd/ P. N. Lnd. 2/6

Remembrancer of Legal Affairs.

U.R. to H.D.No.9448, dated the 6th June 1952.

EKS.18/6/

Office of the R.L.A.

It is true that the Form P.Co.P.at page 151 of the Bombay Motor Vehicles Rules, 1940, prescribed under Rule 54(1)(iii) of the Bombay Motor Vehicles Rules, 1940, provides for sepcifying any other conditions against entry 10. This implies there are some conditions of the permit. Besides entryi 10, there are 9 entries in that for.. It is not quite clear which of them can be treated as conditions. Presumably entries 5 and 6 do provide for such conditions, but in the absence of any specific mention in the Form, itself, it would be difficult to say that the fixation of the number of passenger's seats as provided in entry 5 would constitute a condition the breach of which would involve the suspension or cancellation of the permit. In view of the Madras High Court ruling, it appears deisrable to amend the form of permits specifiaally prescribing the conditions so that in the event of a breach of any of them, the suspension or cancellation of the permit could be warranted.

Sd/ P.N. Lad. 22/8

Remembrancer of Legal Affairs.

U.R. to H.D. No.13820, dated the 23rd August 1952.

"KN.18/8/

Office of the R.L.A.;

Section 64 of the Motor Vehicles Act, 1939, gives to any person aggrieved by the various orders of the State or Regional Transport Authorities the right of making an appeal within the prescribed time, in the prescribed manner and to the prescribed authority. Under rules 75 and 76 of the Bombay Motor Vehicles Rul s, 1940, appeals against the orders of the State Transport Authority and the Regional Transport Authorities lie to the State Government and the appellate Committe of the S.T.A. respectively. In the case of appeals made to the Appellate Committee a fee of Rs.15/- is required to be sent which is refundable in case the appeals succeed. No fee has been prescribed in respect of appeals preferred to Government. As section 64 stands at present it gives the right of appeal only to a person who is aggrieved by any particular order of the Regional Transport Authority or the State Transport Authority. This implies that an appeal can be made only by a person or persons who are aggrieved by any a particular order and have some interest in common. If for example two or more persons apply together for a permit for operating one transport service and their request is rejected, it would be open to them all to make on appeal under clause (e) of section 64. But in the case of several such applicants for different routes it would not be feasible to make one joint appeal as was done by the operators in the Alibag Taluka as reported by the StT.A. though their applications might have been heard and disposed of by one common order. Moreover Rule 76 requires the appellants to forward a fee of Rs.15/- along with their appeal petitions to the appellate Committee. It should not be open to the appellate Committee to entertain the appeals without such fees. If one single joint appeal is allowed the provision of this rule will be violated. The answer to question raised is, therefore, in the negative.

Sd/ P.L.Lad. 23/8
Remembrancer of Legal Affairs.

S/S/ U.R. to H.D.No. 13894, dated the 26th August 1952.

21355/ 12-9-52.

submitted.

The R.L.A. is requested to advise whether the view expressed by the Regional Transport Officer Belgaum, in his letter at p. 3 of the correspondence section, namely that when an application for the transfer of ownership is received by the R.T.O. that officer has no alternative but to effect the transfer is correct.

BKN.18/7/

Office of the R.L.A.

The view expressed by the Regional Transport Officer, Belgaum, and the State Transport Officer is correct.

Sd/ I. U. Lad. 15/9

Remembrancer of Legal Affairs.

U. R. to H.D.No.15168,/A dated the 16th September 1959.

EXH.18/6/

OFFICE OF THE R.L.A.

Under section 60(b) of the Motor Vehicles Act, the Transport Authority which granted a permit may cancel or suspend the permit for such period as it thinks fit if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit. It is, therefore, apparent from this provision that unless the holder of the permit uses the vehicles or causes or allows the vehicle to be used in any manner not authorised by the permit, it would not be competent for the Transport Authority to cancel the permit. The specimen permit in Fom P.Pu.C. under Rule 54(1) (vi) of the Motor Vehicles Rules, specifies that the vehicle authorised by the permit may be used by the holder as a private carrier within the area etc., for the purpose of carrying the following goods etc. This is the kind of use permissible under the permit. The State Transport Officer in his Confidential Memorandum has stated that the expression 'use of the vehicle' would include non-use of a vehicle with the deliberate and avowed object of demonstrating dissatisfaction with the taxation ~~xxxxxxxxx~~ policy of Government. This kind of negative use is not contemplated to a ll by clause (b) of section 60 of the Act. That clause contemplates positive use in any manner not authorised by the permit. The permit does not disallow the non-use of any vehicle for any reason. - Consequently, the view taken by the State Transport Officer that a permit can be cancelled under section 60(b) of the Motor Vehicles Act, is not correct.

Sd/- P. M. Lad. 1/10

Remembrancer of Legal Affairs.

U.R. to H.D.No.1009/A.C nfl, dated the 3rd October 1958.

N.18/5/.

Office of the R.L.A.

It is true that under section 43(1)(ii) of the Motor Vehicles Act, 1939, the State Government is empowered to fix maximum or minimum fares for stage carriages and maximum or minimum freights for public carriers. To take out a permit before using it in any public place. Section 42(1) requres the owner of a transport vehicle The second proviso to that sub-section provides that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods vehicle, either when carrying passengers or not. Subject to the conditions specified in the permit., it is therefore lawful for stage carriages to carry goods. To the extent that stage carriages are allowed to carry goods they will have to be deemed to be public carriers for the purpose of section 43(1)(ii) and therefore before fixing the freights as proposed by the State Transport Authority it will be necessary to follow the procedure prescribed in that section, viz. to give hearing to the representatives of the interests affected and to consulting the State and Regional Transport Authorities. The answer to the question raised by the H.D. is in affirmative.

Sd/- P. M. Lad. 29/9

Remembrancer of Legal Affairs.

U.R. to H.D.,No.16040. dated the 29th September 1952.

EXE.18/8/

Office of the R.L.A.

The question referred to the R.L.A. for consideration is whether the power of appointing the Supervisors, Inspectors and Assistant Inspectors of Motor Vehicles can be delegated to the State Transport Officer. Rule 10 of the Bombay Civil Services Classification and Recruitment Rules provides that recruitment of subordinate services shall be made by Heads of Departments and those Heads of Offices to whom powers have been delegated subject to the provisions of those Rules and under the general control of Government. The expression "subordinate services" as defined in rule 3(f) means the services and posts specified in App.'B'. The posts of Inspectors, Assistant Inspectors and Supervisors have been declared to be posts belonging to the subordinate services (vide Government Notification, Political and Services Department, No.1586/54, dated the 4th March 1949). The Home Department's proposal is therefore legally feasible.

Sd/ P. M. Lad. 14/10

Remembrancer of Legal Affairs.

U.R. to H.D.No. 17043/A, dated the 15th October 1952.

EKK.18/8/

Legal Department.

Application for permit - Motor Vehicles Act, 1939. Sec.47. -matters to be taken into consideration.

As advised in Addl. Secy's opinion No.16693, dated the 20th October 1951, it was not competent to the Regional Transport Authority to hold the application in abeyance as it purported to do. However, that was done and by virtue of the consent order dated 5th December 1951, the petititoner, Shri Shrotry, agreed to the Regional Transport Authority's hearing of the same on merits. It is Shri Shrotry's contention that in hearing this application, the Regional Transport Authority should have taken into consideration only the circumstances as they were existing on 14th February 1947 and not the subsequent developements. It is difficult to accept this contention. It is true that on 14-2-1947, when the application was made, the State Transport was not operating on the routes and if the subsequent circumstances are excluded from consideration, the applicant may have a chance of being successful. It is true that proceedings before the Regional Transport Authorities are in the nature of quasi judicial proceedings. It is also true that in judicial proceedings ordinarily the final decision is to be given in accordance with the rights of the parties as they are at the date of the institution of the proceedings. But that does not debar the deciding authority to take into consideration subsequent events if it is necessary to do so in the interest of justice (Nuri Mian v.Ambeca I.L.R. 44 Ca,.47). Accordingly in the present case, the Regional Transport Authority cannot fail to take the subsequent circumstances into consideration which have now come into play as the application, if granted, is to be granted only prospectively. Section 47 of the Motor Vehicles Act, 1939, enacts that a Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the matters specified in the section. It is obvious, therefore, that the matters enumerated in the section have to be taken into consideration as they exist.....

exist at the time of the decision and not at the time of the application. It was, therefore, competent to the R.T-A. to take into consideration the fact that the State Transport Corporation was running its buses on the routes and to eject the application of the applicant. The order made by the R.T.A. and confirmed in appeal by the State Transport Authority does not, therefore, appear objectionable.

Sd/ J.R-D. 6/2

~~Remembrancer of Legal Affairs.~~
Additional Secretary to Govt.

U.O. to R.D.No.20632/A dated the 8th December 1952.

KXN.10/6/

Office of the R.L.A.

Section 68 of the Motor Vehicle Act empowers the State Government to make rules for the purpose of carrying out the provisions of Chapter IV namely, Control of Transport Vehicles. Clause (q) of sub-section (2) of that section provides that rules can be made for the provision of taxi meters on motor cabs, requiring approved or standard types of taxi meters to be used, and examining, testing and sealing taxi meters. A rule for the examination and testing of meters can be made under this section. The power now proposed to be given to Police Officers and Motor Vehicle Inspectors would no doubt be for the purpose of enabling the examination to be undertaken. But the power itself cannot betaken merely by making a rule as proposed. An Amendment of the Motor Vehicles Act, 1939, appears to be necessary. In this connection attention is invited to section 129A of the Motor Vehicles Act, which gives power to police and mother authorised officers to seize and detain vehicles for the purpose of verifying whether they are carrying proper certificates of registration or permits.

Sd/ P. M. Lad. 20/10

Remembrancer of Legal Affairs.

U.R. to H.D.No.12413/A dated the 21st October 1952

EKN.18/6/